

UNITED STATES COURT OF APPEALS

June 23, 2005

TENTH CIRCUIT

PATRICK FISHER
Clerk

JOHNNY RAY CALDWELL,
Plaintiff-Appellant,

v.

UTAH STATE PRISON, Mental
Health; STATE OF UTAH; and
DEPARTMENT OF CORRECTIONS,
Defendants-Appellees.

No. 05-4046

(D.C. No. 2:04-CV-176-DAK)

(D. Utah)

ORDER AND JUDGMENT*

Before **EBEL**, **McKAY**, and **HENRY**, Circuit Judges.

After examining Appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a *pro se* civil rights appeal under 42 U.S.C. § 1983. In his claim to the district court, Mr. Caldwell asserted that his civil rights were violated by Utah

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Department of Corrections officials (Defendants). Mr. Caldwell claims Defendants violated his constitutional rights by depriving him of adequate medical care for his various mental disorders. Mr. Caldwell alleges Defendants' inaction subjected him to cruel and unusual punishment under the Eighth Amendment. Mr. Caldwell also claims Defendants violated his right to access the courts by not providing him adequate legal materials or assistance. The district court dismissed Mr. Caldwell's complaint because he failed to state a claim for relief under 42 U.S.C. § 1983 and entered judgment in Defendants' favor on both claims. Mr. Caldwell appeals to this court.

After a thorough review of the Appellant's brief, the district court's order, and the record, and for substantially the same reasons set forth in the district court's well-reasoned January 27, 2005 order and judgment of dismissal, we hold that no relief is available to Mr. Caldwell pursuant to § 1983.

The decision of the district court is **AFFIRMED**. Mr. Caldwell's motion to proceed *in forma pauperis* on appeal is **GRANTED**. We therefore remind Mr. Caldwell that he must continue to make partial payments of his court fees and costs previously assessed until such have been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge